



COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION
Open Markets, Open Systems, Open Networks

Sept. 28, 2006

The Honorable Dennis Hastert
235 Cannon House Office Building
Washington, D.C. 20515-1314

Dear Mr. Speaker:

Today the House will take up HR 5825, a measure that is said to “update” the Foreign Intelligence Surveillance Act. This bill, in our view, hardly updates FISA. Rather, it eviscerates it. If passed, HR 5825 will grant sweeping surveillance power to the Administration, power that is hardly balanced by language laden with vague, undefined terms and loopholes easily circumvented by almost any determined law enforcement official.

Such measures imperil not only civil liberties but the confidence millions of Americans place in the Internet. HR 5825, moreover, threatens to strip the United States of vital, moral authority it can bring to bear on issues of free speech and political freedom abroad. The U.S. government can ill afford such a loss at a time when despotic regimes are using all means possible to spy on their citizens and restrict basic civil liberties.

Despite recent, minor changes to the bill, it remains fatally flawed. If passed, the measure would still:

- Allow for warrantless surveillance of U.S. citizens
- Make FISA review optional, and thus surveillance without judicial oversight the norm
- Set up undefined and effectively open-ended time periods during which surveillance could be carried out in secret by the executive branch, free of oversight by Congress or the courts
- Place on communications providers an ongoing responsibility to comply with orders of questionable constitutionality.

Legislation that threatens fundamental rights of citizens, constitutional principles, and the freedom and openness of the Internet ought not to be considered in the politically charged and pressured closing days of Congress. These issues are too important to have partisan considerations play the large role that, by many media accounts, they do now.

The House cannot lightly cast aside the fundamental checks and balances between Congress and the White House. Neither intelligence officers, for whom privacy and free expression are of only secondary concern, nor the political officials to whom they report, should be free of effective oversight.

We urge you to heed carefully concerns about the constitutionality, scope, and wisdom of HR 5825. We understand our industry's technology and the many ways in which it can be used. We cannot overemphasize that technology that can be used for great good can also serve repressive purposes. The power that comes from technological surveillance is massive. It needs greater, not lesser checks to curb its misuse.

The mere possibility of widespread, secret, and unchecked surveillance of the billions of messages that flow among our customers, especially U.S. citizens, will erode the fundamental openness and freedom necessary to our communications networks. Even if this power is not deliberately misused, the loss of a sense of privacy in personal and confidential business communications will inflict great and long-lasting damage on the dynamic and innovative growth intrinsic to the high technology sector.

Technology flourishes when we are open to competition, to our users, and to new ideas. A commitment to openness in commerce, consumers, and ideas cannot be sustained, however, if users fear a betrayal of the privacy and the security of their personal and business communications. Congressional approval of sweeping and warrantless electronic surveillance could irrevocably sunder the public trust in the sanctity of civil rights, privacy, and security in our modern information infrastructure.

Proponents for change are in some cases justified in calling for "modernization" and "flexibility." But such words can too easily distract attention from proposals that undermine constitutional checks and balances. HR 5825's invisible and unrestrained surveillance power will place our industry in the role of law enforcement surrogate, thereby sacrificing customers' privacy and security.

There is another dimension to this issue of which we are acutely aware. Our industry is confronted with escalating monitoring and surveillance by repressive foreign regimes. When challenged, totalitarian states often justify their policies by pointing to U.S. government practices.

The U.S. government needs to lead in promoting freedom within repressive regimes. But such leadership will fall flat if all we can show is that our surveillance is somewhat less pervasive. A failure to protect basic freedoms now can only weaken the hand of U.S. companies that must contend with censors, regulators and secret police abroad.

American leadership requires that we set a good example. We as a nation must respect legitimate, constitutional interests including Congressional oversight of the Executive Branch. This nation and its Constitution have arrived at a moment of truth. Whatever this Congress decides will impact the freedom and openness of communications networks around the world.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Black", with a stylized flourish at the end.

Ed Black

President & CEO
Computer & Communications Industry Association

Member and former Chairman of the State Department Advisory Committee on International Communications and Information Policy